IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.787 OF 2005
IN
EXECUTION APPLICATION NO.170 OF 2005
IN
SUMMARY SUIT NO.3215 OF 2001

Jaleshwar Singh ....Plaintiff
V/s.
M/s.Ekta Electronics & Ors. ....Defendants
And
The Chembur Nagarik Sahakari Bank Ltd. ....Applicant

WITH

CHAMBER SUMMONS NO.788 OF 2005
IN
EXECUTION APPLICATION NO.170 OF 2005
IN
SUMMARY SUIT NO.3215 OF 2001

Jaleshwar Singh ....Plaintiff
V/s.
M/s.Ekta Electronics & Ors. ....Defendants
And
Smt.Premlata Ambalal Jain ....Applicant

Mr.K.V. Tembe for the Applicants.
Mr.Anil Pandey for the Plaintiffs.

CORAM : S.J. VAZIFDAR, J.
DATED : 31ST JANUARY, 2006.

P.C. :

1. The above Chamber Summonses have been taken out by the respective Applicants for raising/setting aside the attachment levied on Shop No.6, Chembur

pursuant to the warrant of attachment issued by this Court. The Applicant in Chamber Summons No.788 of 2005 claims to be the owner of the said shop. The Applicant in Chamber Summons No.787 of 2005 claims to be the mortgagee in respect of the said shop.

2. The decree was passed on 13.12.2004 pursuant to the warrant of attachment issued on 31st May, 2005. Pursuant thereto, the attachment was levied on the said shop on 1st June, 2005.

3. It is true that Defendant No.1 had purchased the said shop in 1997 by a registered agreement. It is however, important to note that on 11.4.1997, Defendant No.3 mortgaged the shop in favour of the Bank Applicant in Chamber Summons No.787 of 2005. The mortgage was by way of equitable mortgage. It is stated that the same was even registered. There is however no dispute about the creation of the mortgage.

4. An agreement in writing dated 26.3.2005 was entered into between Defendant No.3 and the Applicant in Chamber Summons No.788 of 2005, by which Defendant No.3 sold the said shop to the Applicant in Chamber Summons No.788 of 2005. The agreement was subsequently registered. It is important to note that

the Applicant in Chamber Summons No.788 of 2005 was granted a loan by the Applicant bank in Chamber Summons No.787 of 2005 in respect of the said purchase. Pursuant thereto, on 31.3.2005, a fresh mortgage was executed by the Applicant in Chamber Summons No.788 of 2005 in favour of the Applicant in Chamber Summons No.787 of 2005.

5. Thus the acquisition of the said shop and mortgage in respect thereof for repayment of the dues of the Applicant bank were created prior to the attachment. In these circumstances, the attachment cannot affect the rights of the Applicants in either of the Chamber Summonses. *(See (1990) 3, SCC 291)*.

6. In the circumstances, Chamber Summons No.787 of 2005 is made absolute in terms of prayer (b). Chamber Summons No.788 of 2005 is also made absolute in terms of prayer (b).